

RECENTED

OFFICE OF THE CITY MANAGER

NO. LTC#

328-2012

LETTER TO COMMISSION
CITY CLEAR'S OF RE

TO:

Mayor Matti Herrera Bower and Members of the City Commission

FROM:

Kathie G. Brooks, Interim City Manager

DATE:

December 17, 2012

SUBJECT: Short-Term Rentals – Citywide and within the Flamingo Park Historic District

The purpose of this Letter to Commission (LTC) is to provide an update and status report on Short-Term Rentals (STR) and Transient-use code violations, as a follow up to LTC # 081-2012 dated March 13, 2012, and as requested by the Land Use and Development Committee (LUDC).

As reflected in LTC 081-2012, during calendar year 2011, the Code Compliance Division issued a total of 77 Notices of Violation (NOVs) citywide for unauthorized and illegal STRs within residentially zoned areas, for both single family as well as, multi-family zoning designations.

This report serves as an update for the period of January 1, 2012, through October 30, 2012. During this period, a total of 65 new Notices of Violation for Short-Term Rentals were issued, of which 47 were scheduled to be heard by the Special Master. Of these 47 cases; 25 have been heard by the Special Master thus far. The breakdown of the 65 violations is as follows:

- > Eighteen (18) were upheld by the Special Master and adjudicated guilty.
- > Three (3) were dismissed by the Special Master for failure to provide clear and convincing evidence.
- > Four (4) appeared before the Special Master and a continuance was granted.
- > Twenty-two (22) are currently scheduled and have yet to be heard before the Special Master.
- > Seventeen (17) were reviewed by the City Attorney's Office and Administration and
 - Were deemed to provide insufficient evidence; and/or
 - Were opened by Code Compliance Division staff that are no longer available or employed by the City.
- One (1) achieved compliance prior to being heard at Special Master

The Special Master proceeding is quasi-judicial in nature, and the strict rules of evidence are not to be applied in these code enforcement hearings. Generally speaking, the standard of proof that is to be applied during a code enforcement hearing is a preponderance of the evidence standard for the determination of the existence of a violation.

In 2007, the 11th Judicial Circuit Court of Florida, sitting in its appellate capacity, issued an opinion in Tequila Chicas v. City of Miami Beach, which enhanced the standard of proof for code enforcement proceedings from a preponderance of the evidence standard, to a clear and convincing standard of proof as the appropriate standard of proof for the existence of the violation. The City Attorney's Office has reviewed the opinion issued in Tequila Chicas, and in conjunction

with other Florida case law precedent, has determined that hearsay statements are insufficient evidence to prove those elements of a violation for transient occupancy and/or short-term rental of a residential property, without other evidence which corroborates the hearsay statements.

In that respect, the Code Compliance Division cannot solely rely upon the hearsay statements of the transient occupant of a premise to prove the violation, and must obtain corroborating evidence to support the existence of the violation under the clear and convincing standard of proof for this quasi-judicial proceeding.

In response, at the end of 2011 and in early 2012, the Code Compliance Division initiated a process in order to physically take possession of an unauthorized STR unit; however, this proposition became financially unattainable and labor intensive. More recently, Code Compliance Division staff has been directed to expand their due diligence to also include statements from tenants and area neighbors, copies of lease agreements and advertisements presented in various websites and search engines including, Google, Craigslist, VacationRentals.com, HomeAway.com, Trip Advisor, and other similar entities. The weight of the evidence collected should serve to establish the burden of proof expected by the Special Master.

As it relates to the Flamingo Park Historic District, during the ten (10) month period of this analysis, the data reflects twelve (12) cases with the following breakdown:

- > Two (2) cases were dismissed by the Special Master for failure to meet the threshold of clear and convincing evidence.
- > Four (4) cases were closed administratively, as they were issued by former staff unable to testify because they are no longer employed by the City.
- > One (1) case was recently issued a NOV and is pending a response from the recipient.
- > Five (5) cases are pending Special Master Hearings.

The City has continued its outreach and educational campaign regarding the regulations and licensing requirements governing short-term rentals for multi-family units. These efforts include articles on short-term rental restrictions published in the City's MB Magazine, MBTV programming (MB Currents and MB Al Día), as well as a letter outlining the regulatory requirements within the Flamingo Park Historic District which was mailed on December 7, 2012, to all property owners within the Flamingo Park Historic District, (sample letter attached).

Lastly, efforts are ongoing to provide information on the City's web portal to residents, businesses and individuals looking to establish a Transient-use business (i.e. Bed & Breakfast); as well as, for visitors who wish to confirm the licensing of STR and Transient entities. The three-pronged approach to the residents, businesses, and tourists, will seek to not only provide much needed information, but reduce the number of illegal STR throughout our City.

Attachment: Letter to Flamingo Park Property Owners

KB/JCG/SS/HC/RSA

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City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

BUILDING DEPARTMENT Code Compliance Division Tel: 305.673.7555, Fax: 305.673.7012

December 5, 2012

Property Owner Name Property Owner Address City, State Zip

RE: Short-Term Rentals

Dear Property Owner:

It is the collective goal of the City of Miami Beach (the City) and its Code Compliance Division to ensure that residents and visitors alike have a safe and enjoyable experience in Miami Beach. Accordingly, the City wishes to remind you of current laws and regulations regarding short-term rentals within your neighborhood.

As a courtesy, we are reminding property owners of residential units within the Flamingo Park Historic District that, unless otherwise previously approved with the appropriate Business Tax Receipt (BTR) and Certificate of Use (CU), the transient use / short-term (less than six (6) months and one (1) day) rental of your unit, shall be deemed illegal and a zoning violation.

In the majority of circumstances unauthorized/unpermitted rental units do not have the appropriate infrastructure requirements associated with the transient use (e.g. proper exits, fire sprinkler system), and typically do not satisfy the zoning requirements. Additionally, when allowed, property owners are required to pay resort taxes.

In accordance with Section 142.1111, any property located within a residentially zoned district, must not be rented for a period of less than six (6) months and one (1) day (unless expressly approved as provided for in the Code).

The City is working to provide information on its website to educate businesses, property owners, residents and visitors alike regarding short-term rental requirements and restrictions, including a link that will enable potential visitors to confirm the licensing of Short-Term Rentals and Transient entities.

The City thanks you in advance for your cooperation in this effort. Should you wish to report a suspected illegal short-term rental location, please call the Code Compliance Division at 305.673.7555. Should you have any questions, please do not hesitate to contact me at 305.673.7077.

Sincerely.

Hernan Cardeno, Esq. Division Commander

JGG/SS/HC